
(2011) 07 DEL CK 0051

In the Delhi High Court

Case No : Writ Petition (C) 2856 of 2008

Bharat Polychem Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 7A, 7B, 7B(5)

Citation : (2012) 1 LLJ 595

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : D.N. Vohra, for the Appellant; Saurabh Chadha, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the order dated 16th March, 2007 of the Assistant Provident Fund Commissioner (APFC), Delhi dismissing the application of the Petitioner Company u/s 7B of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF Act) for review of the order dated 17th May, 2006 issued in exercise of powers u/s 7A of the Act.

2. Notice of the petition was issued and counter affidavit has been filed by the Respondents. Though no interim order as sought was earlier granted but CM No. 4966/2011 was filed again seeking stay of recovery in pursuance to the order dated 16th March, 2007 and vide order dated 6th April, 2011 coercive steps against the Petitioner Company were stayed.

3. The counsel for the Petitioner company today, instead of arguing on the petition has only urged that provident fund dues against the Petitioner Company cannot be recovered from Sh. Govind Gupta, Director of the Petitioner Company, without first seeking to recover the same from the Petitioner company. It is urged that the Respondents without making any attempt to recover the dues from the Petitioner company, are seeking to recover the same by taking coercive

action against the said Sh. Govind Gupta.

4. The writ petition has not been filed by Sh. Govind Gupta but by the company. If Sh. Govind Gupta is aggrieved by the steps if any taken for recovery against him, it is for him to approach the Court. He has not done so. Though the petition has been filed and is being pursued on behalf of the Petitioner company by the said Sh. Govind Gupta who is stated to be the Director of the Petitioner company and who admittedly has been representing the Petitioner company throughout before the APFC also but the company is an entity distinct from its Director and the petition preferred by the company cannot be treated as a petition by the Director of the company.

5. It has in any case been enquired from the counsel for the Petitioner company as to what are the assets of the Petitioner company. It is stated that the Petitioner company is possessed of properties, shares, monies in Banks. If that be so, then I do not see as to why Mr. Govind Gupta as Director of the Petitioner company does not pay the PF dues.

6. Though the counsel for the Petitioner has not argued the petition as filed but the same has been perused. The Regional Provident Fund Commissioner (RPFC) in the order dated 17th May, 2006 has held that upon the Petitioner company having failed to remit provident fund, pension fund, deposit linked insurance fund contributions and administrative charges in accordance with the Act, for the purposes of determining the amount due, an inquiry u/s 7A of the Act was initiated and the Petitioner company was afforded an opportunity to represent the case, first on 26th December, 2001 and thereafter on repeated dates on some of which Mr. Govind Gupta, Director of the Petitioner company appeared and produced the documents. The RPFC vide the said order on the basis of the material before him determined an amount of `2,33,769/- as payable by the Petitioner for the period September, 1997 to November, 2001.

7. The Petitioner preferred a review of the aforesaid order and which as aforesaid has been dismissed vide order dated 16th March, 2007 impugned in this writ petition.

8. The counsel for the Respondents has contended that the order u/s 7A was appealable and the Petitioner having not preferred appeal there against, the same has attained finality. A perusal of Section 7B and particularly Sub-section (5) thereof also shows that though no appeal lies against an order rejecting an application for review but appeal is permitted against an order passed under review as if the order passed under review were the original order u/s 7A.

9. A perusal of the order dated 16th March, 2007 shows that APFC literally reviewed the order dated 17th May, 2006 and reached a conclusion that there was no error as pointed out in the order dated 17th May, 2006. An appeal against such an order would lie u/s 7B(5) (supra). This writ petition is not maintainable for said reason.

10. As far as the argument of the counsel for the Petitioner of no recovery being possible from Sh. Govind Gupta is concerned, Mr. Govind Gupta has admittedly stood guarantee for payment of the dues. The counsel for the Respondents has also invited attention to Section 2(e) of the Act to contend that Mr. Govind Gupta is in position of employer and thus liable. However since as aforesaid that is not the question raised in the writ petition, need is not felt to adjudicate the same.

11. The present writ petition would thus be not maintainable for the reason of availability of alternative efficacious remedy of appeal which has not been availed of.

The petition is therefore dismissed.